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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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7 *Ex parte* NEREIDA MARIA MENENDEZ,
8 PAULA S. WILLIAMS,
9 and MICHAEL J. MANIS

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12 Appeal 2012-010607
13 Application 09/698,502
14 Technology Center 3600

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18 Before ANTON W. FETTING, MICHAEL W. KIM, and
19 NINA L. MEDLOCK, *Administrative Patent Judges*.
20 FETTING, *Administrative Patent Judge*.

21 DECISION ON APPEAL

STATEMENT OF THE CASE¹

Nereida Maria Menendez, Paula S. Williams, and Michael J. Manis (Appellants) seek review under 35 U.S.C. § 134 of a non-final rejection of claims 62-78, 113-127, 137, and 139, the only claims pending in the application on appeal. Oral arguments were presented January 24, 2013. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

This is the second time this application has come up for appeal. In the prior appeal, the panel affirmed the Examiner as to all rejected claims in a decision mailed February 20, 2008.

The Appellants invented a way of completing a rental agreement for an item or service, such as a vehicle rental service (Specification 1:15-17).

An understanding of the invention can be derived from a reading of exemplary claim 62, which is reproduced below [bracketed matter and some paragraphing added].

62. A method

of creating and storing an electronic rental contract for a rental vehicle

such that a user need not visit a rental counter to create a rental contract

when arriving at a car rental facility to pick up the rental vehicle,

the method comprising:

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed April 16, 2012) and the Examiner's Answer ("Ans.," mailed May 17, 2012).

- 1 [1] hosting a website on a server system,
2 the website comprising a plurality of web pages for
3 access over a network by any of a plurality of client
4 systems;
- 5 [2] creating a rental vehicle reservation
6 in response to data received through the website from a
7 client system;
- 8 [3] storing a reservation transaction within the server system,
9 wherein the reservation transaction is representative of
10 the created rental vehicle reservation;
- 11 [4] electronically accepting additional data from the user
12 through the website
13 for a potential rental of a rental vehicle
14 based on the rental vehicle reservation;
- 15 [5] communicating an electronic rental proposal
16 for display to the user on a web page of the website,
17 the electronic rental proposal being based on
18 the rental vehicle reservation
19 and
20 the accepted additional data;
- 21 [6] creating an electronic rental contract for a rental vehicle
22 in response to an electronic acceptance by the user of the
23 electronic rental proposal,
24 the electronic rental contract permitting the user
25 to avoid creating a rental contract at the rental
26 counter when arriving at the car rental facility to
27 pick up a rental vehicle in accordance with the
28 electronic rental contract;
- 29 and
- 30 [7] storing a rental transaction within the server system,

1 wherein the rental transaction is representative of the
2 created electronic rental contract;
3 and
4 [8] wherein the
5 electronically accepting,
6 communicating,
7 electronic rental contract creating
8 and
9 rental transaction storing
10 steps are performed
11 regardless of whether the user has a pre-existing master
12 rental agreement with a rental car company that operates
13 the car rental facility.

14 The Examiner relies upon the following prior art:

 Coutts US 5,389,773 Feb. 14, 1995

15 Information on Hertz Corporation, archived web pages printed through
16 www.archive.org (1997-2000) (Hertz)

17 Avis Rent A Car – Rates and Reservations,
18 http://www.avis.com/rates_and_reservations/ (last visited March 03,
19 2000). (Avis)

20 Hertz Announces New, Elite Levels for #1 Club Gold Members in the
21 US, 11 July 2000, PR Newswire Association, Inc. (Hertz Gold)

1 Claims 62-78, 113–127, 137², and 139 stand rejected under 35 U.S.C. §
2 112, second paragraph, as failing to particularly point out and distinctly
3 claim the invention.

4 Claims 62-66, 71-78, 113-116, 121-127, and 137 and 139³ stand rejected
5 under 35 U.S.C. § 103(a) as unpatentable over Hertz, Hertz Gold, and Avis.

6 Claims 67-70 and 117-120 stand rejected under 35 U.S.C. § 103(a) as
7 unpatentable over Hertz, Hertz Gold, Avis, and Coutts.

8 ISSUES

10 FACTS PERTINENT TO THE ISSUES

11 The following enumerated Findings of Fact (FF) are believed to be
12 supported by a preponderance of the evidence.

13 *Claim Construction*

14 01. The disclosure contains no lexicographic definition of
15 “agreement.”

16 02. The ordinary and customary meaning of “agreement” is (1) the
17 act of agreeing; (2) harmony of opinion; accord; (3) an
18 arrangement between parties regarding a course of action; a
19 covenant; (4) Law (a) a properly executed and legally binding

² The Examiner asserts that claim 136 is rejected on these grounds (Ans. 5), however, claim 137 is pending instead of claim 136. Accordingly, we treat this as an inadvertent typographical error.

1 contract; or (b) the writing or document embodying this contract.⁴

2 These definitions are substantially the same as those provided by
3 the Appellants in the Evidence Appendix to the Appeal Brief.

4 03. The disclosure contains no lexicographic definition of a master
5 agreement.

6 04. The usual and customary meaning of “master” as an adjective is
7 (1) to act as or be the master; (2) principal or predominant; (3)
8 controlling all other parts of a mechanism; (4) highly skilled or
9 proficient; or (5) being an original from which copies are made.⁴

10

³ The Examiner asserts that claims 128-135 are rejected on these grounds (Ans. 7), however, claims 137 and 139 are pending instead of claims 128-135. Accordingly, we treat this as an inadvertent typographical error.

⁴ *American Heritage Dictionary of the English Language* (4th ed. 2000).

Admissions

05. The Appellants admit that Hertz describes accepting a reservation proposal and storing an electronic reservation agreement (Appeal Br. 5:Second ¶ in Appeal 2007-3067).

Hertz

06. Hertz is a web site for Hertz, the car rental company, which provides the contents of the legal requirements for its agreements and provides screens for customers to enter rental reservations.

07. Hertz describes its system as allowing a customer to make, modify, or cancel a reservation (Hertz 27).

08. Hertz describes the use of a customer profile for entering data into a reservation (Hertz 17).

09. Hertz portrays radio button selection of entry by customers with existing profiles and general customers (Hertz 36).

10. Hertz describes an offer for a rental vehicle for value containing the material terms of the agreement, and requesting acceptance by the customer (Hertz 44).

Avis

11. Avis describes entry and storage of a vehicle rental reservation.

Hertz Gold

12. Hertz Gold describes offering members an automatic invitation to move up to #1 Club Gold after completing four rentals. Hertz Gold 1.

1 13. In 1972, Hertz became the first car rental company to recognize
2 the strategic value of maintaining a customer profile database,
3 with the introduction of Hertz #1 Club. The service created a data
4 file for each customer, by maintaining driver's license information,
5 home address, car class information and credit card information
6 for instant recall. For Hertz' customers; #1 Club helped reduce
7 time spent making reservations and sped the process when renting
8 a car. Hertz Gold 1-2.

9 14. After implementing #1 Club service, Hertz recognized the
10 additional customer benefit to not only keeping an active profile
11 on customers, but also allow customers to bypass the counter
12 altogether, with the keys and completed rental agreement ready
13 and waiting for them. Hertz Gold 2.

14 *Coutts*

15 15. Coutts is directed to a self-service system arranged to store data
16 relating to previous transactions initiated by various users of the
17 system, and arranged to predict the type of transaction to be
18 initiated by a given user, the mode of operation of said system
19 when performing a transaction for a particular user being
20 dependent on a prediction made by said prediction means
21 following identification of that user (Coutts 1:36-51).

22 16. Coutts describes its contents as applicable to self service
23 systems, of which ATM's are examples (Coutts 1: 7-20).

ANALYSIS

Claims 62-78, 113–127, 137, and 139 rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention.

We are not persuaded by the Appellants’ argument that “by its plain language, claims 62 and 113 are abundantly clear in scope as to what master rental agreements (MRAs) are described in the claim.” Appeal Br. 11. The issue the Examiner raises is that, because the claim expresses a negative limitation with an ambiguous element, *viz.* “regardless of whether the user has a pre-existing master rental agreement”, (Appeal Br. 10) it is unclear and therefore indefinite as to what the scope of the subject matter is.

There is no lexicographic definition of a master agreement. Among the potential meanings under normal usage is that of an original from which copies are made. Thus, being a negative implementation, the scope must include only those implementations from which no copies are made. Yet in any data processing process, and even in the implementations disclosed in the Appellants’ Specification, all data are copied from the original input. Thus, the Examiner is pointing out an internal logical inconsistency making even the disclosed implementation impossible to find itself within the scope as drafted. While Appellants might argue their meaning of a master agreement differs from that in normal usage, there being no lexicographic definition, we must test the claim against its broadest reasonable interpretation. Ultimately, the word “master” has no intrinsic objective meaning, but is only “master” relative to the particular subject facts.

1 *Claims 62-66, 71-78, 113-116, 121-127, 137, and 139 rejected under 35*
2 *U.S.C. § 103(a) as unpatentable over Hertz, Hertz Gold, and Avis.*

3 *Claims 67-70 and 117-120 rejected under 35 U.S.C. § 103(a) as*
4 *unpatentable over Hertz, Hertz Gold, Avis, and Coutts.*

5 We are not persuaded by the Appellants' argument that

6 the HertzGold reference merely teaches that Hertz customers
7 that are members of Hertz's #1 Club program will be invited to
8 join the #1 Club Gold program, with a waiver of a membership
9 fee, after those customers complete 4 rentals. Once members of
10 Hertz's #1 Club Gold program, such customers would be
11 entitled to an ability to expedite a rental by avoiding a need to
12 sign a rental agreement when they arrive at a Hertz location to
13 pick up a rental vehicle.

14 Importantly, however, with respect to claim 62, the evidence of
15 record in this patent application shows that to become a
16 member of the "Hertz #1 Club Gold" program, a customer is
17 required to enter into an MRA with Hertz. As such, the counter
18 bypass capability described in the HertzGold reference is only
19 available to Hertz customers who have a pre-existing MRA
20 with Hertz.

21 Appeal Br. 16. (emphasis and footnote omitted).

22 First, it is unclear that Hertz actually requires members to be a Gold
23 Club member to be able to bypass the rental counter. Second, the claim does
24 not preclude a master rental agreement, and several dependent claims use
25 such an agreement. Thus, the issue is whether one of ordinary skill, on
26 reading Hertz Gold, would have recognized that one could use an auto
27 reservation just as easily as Hertz's Gold Club agreement as the data source
28 to create the rental agreement.

1 Certainly all of the information necessary for the contract is in any
2 reservation that a prudent car rental company would employ. There is no
3 argument of technical infeasibility, or even difficulty in copying data from a
4 reservation to a contract. It is not even necessary to copy data from a
5 reservation – the reservation itself may simply be subsequently recognized
6 as a contract. There is also no patentable distinction between a reservation
7 and a contract, if they are otherwise the same. Status of a document as a
8 contract is perceptible only to the human mind and is therefore given no
9 patentable weight. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004).

10 Hertz Gold makes it clear the Gold Club is a marketing tool rather than a
11 technical requirement. Hertz Gold also makes clear that there is an
12 advantage to allowing a customer to bypass the rental counter independent
13 of Gold Club status. Thus, there was the known reason and technique for
14 allowing a customer to bypass the counter prior to the filing of the instant
15 application. Appellants argue simply that Hertz declined to allow non-
16 members to bypass the counter. Again, to the extent this was so, it was
17 clearly for marketing reasons to establish customer affinity rather than
18 technical limitations or lack of predictability.

19 Claims 65 and 115 recite a user selectable option to create a reservation
20 and to turn the reservation into a contract. Appellants argue the references
21 do not show these. The Examiner found that both Hertz and Avis websites
22 showed various user selectable options. As any option subject to user
23 selection is a predictable target for a user selectable option, the Examiner
24 found the options to create a reservation and to turn the reservation into a
25 contract to be such predictable variations. We agree with and adopt these
26 findings.

1 Claims 66 and 116 recite email with (1) a confirmation of the created
2 reservation, and (2) a user selectable link that is effective upon user selection
3 to link the user to the web page that is configured to solicit the additional
4 data from the user. Appellants argue the references do not show these. The
5 Examiner found such emails with links back to data entry were notoriously
6 well known prior to filing. We agree with and adopt these findings.

7 Claims 72 and 122 recite permitting the user to electronically modify the
8 pre-filled data without modifying the master rental agreement. Appellants
9 argue the references do not show these. The Examiner found Hertz permits
10 this. We agree with and adopt these findings. FF 07. We also find the
11 panel in the prior appeal already made similar findings as to this issue.
12 Decision 12-13 regarding claim 4.

13 Claims 73 and 123 recite essentially an UNDO option. Appellants argue
14 the references do not show these. The Examiner found Hertz does this. We
15 agree with and adopt these findings. UNDO is a generic feature found in
16 most operating system, including Windows. As the operating system
17 continues to provide its services while an application is processing, such an
18 UNDO would be available in Hertz's web site.

19 Claims 74 and 124 recite essentially breaking the process flow if the
20 driver license is invalid. The Examiner found Hertz does this inherently or
21 predictably as part of validation. We agree with and adopt these findings. A
22 driver license is an essential and necessary condition for a car rental. The
23 rental process would necessarily be interrupted if a driver license is not
24 valid.

Claims 75 and 125 recite essentially breaking the process flow if the credit card is invalid. The Examiner found Hertz does this inherently or predictably as part of validation, and further that credit card validation was widely known and performed throughout commerce prior to filing. We agree with and adopt these findings. A credit card is almost an essential and necessary condition for a car rental because of the cost of an auto and the risk of accidents that would have to be partially paid with a credit card. The rental process would necessarily be interrupted if a credit card is not valid.

Claims 76 and 126 recite essentially the combination of claims 74 and 75 and claims 124 and 125 respectively. Thus, we find Appellants' arguments here unpersuasive for the same reasons as their component claims 74, 75, 124, and 125.

Claim 139 simply adds that the customer does not have a master plan. This is no more than the logical implication of parent claim 62, and so Appellants' arguments here are unpersuasive for the same reasons as claim 62.

CONCLUSIONS OF LAW

The rejection of claims 62-78, 113-127, 137, and 139 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is proper.

The rejection of claims 62-66, 71-78, 113-116, 121-127, 137, and 139 under 35 U.S.C. § 103(a) as unpatentable over Hertz, Hertz Gold, and Avis is proper.

The rejection of claims 67-70 and 117-120 under 35 U.S.C. § 103(a) as unpatentable over Hertz, Hertz Gold, Avis, and Coutts is proper.

DECISION

The rejection of claims 62-78, 113-127, 137, and 139 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.137(a). *See* 37 C.F.R. § 1.137(a)(1)(iv) (2011).

AFFIRMED

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